

BEFORE THE  
CALIFORNIA STATE BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS

In the Matter of the Petition for Reinstatement of  
Certificate to Practice Pharmacy of:

HOI-CHI CHEUNG

Pharmacist License No. RPH 35355

Petitioner.

Case No. 2578

OAH No. N2007040269

**DECISION**

This matter was heard before the California State Board of Pharmacy on April 19, 2007, in Sacramento, California. Board members present and participating in the hearing were: William Powers, President; Dr. Ruth M. Conroy; D. Timothy Dazé; Stanley W. Goldenberg; Robert Graul; Dr. Clarence K. Hiura; Henry A. Hough; Dr. Susan L. Ravnan; and Dr. Robert E. Swart. Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, presided.

Joshua A. Room, Deputy Attorney General, appeared pursuant to Government Code section 11522.

The petitioner, Hoi-Chi Cheung, appeared in propria persona.

The matter was submitted on April 19, 2007.

**ISSUE**

Should petitioner's certificate to practice pharmacy be reinstated?

## FACTUAL FINDINGS

### *BACKGROUND*

1. On June 11, 1980, the State Board of Pharmacy issued pharmacist license number RPH 35355 to the petitioner, Hoi-Chi Cheung.

2. On February 4, 2003, in the Superior Court of California for the County of San Bernardino, petitioner was convicted of violating Penal Code section 487, felony grand theft, and Penal Code section 508, felony embezzlement by an agent. The convictions were on pleas of guilty. The court sentenced petitioner to 16 months in prison.

3. Petitioner's conviction resulted from incidents that occurred between December of 1999 and January of 2002. Petitioner, while working at the Kaiser Foundation Pharmacy in Fontana, California, stole over 71,000 tablets of Viagra, which had a wholesale value in excess of \$500,000. He also stole small quantities of other drugs. Petitioner had developed a gambling habit and sold the stolen drugs to a co-conspirator to obtain funds for gambling.

4. By an accusation dated June 23, 2003, Patricia F. Harris, Executive Officer of the Board of Pharmacy, sought discipline against petitioner's license. Ms. Harris alleged petitioner's acts of dishonesty, his possession of drugs without a prescription, and the conviction.

5. Petitioner and the board entered into a stipulation pursuant to which petitioner admitted the allegations in the accusation and surrendered his license. As a further stipulation, the parties agreed that, as a condition precedent to any petition for reinstatement of petitioner's license, he is required to pay the board \$8,298 in cost recovery. The stipulated settlement and disciplinary order became effective on February 14, 2004.

6. By a petition dated January 14, 2007, petitioner petitioned the board for reinstatement of his license. That petition is the subject of this proceeding.

### *PROFESSIONAL DEVELOPMENT*

7. Petitioner submitted an extensive list of pharmaceutical articles he has read.

8. Petitioner submitted copies of certificates for continuing education courses he has completed. In 2006, petitioner completed 64 hours of board-approved continuing education courses.

### *REHABILITATION*

9. Petitioner is very remorseful. When he was first confronted with what he had done, he apologized to representatives of Kaiser. He is remorseful for the pain he caused his

wife and two sons and the financial burdens he imposed on them. He has promised that he will never hurt them again. He has pledged to them that he will walk a straight and narrow path.

10. Petitioner was arrested in February of 2002. Between March of 2002 and April of 2003, when petitioner was imprisoned, he and his wife attended 19 meetings of gamblers anonymous.

11. Petitioner made full restitution to Kaiser. He paid \$411,000 in cash and transferred property worth \$110,000. He borrowed a substantial part of the cash from friends and members of his family. He has repaid all but approximately \$45,000 of that and plans to repay the remaining \$45,000.

12. Petitioner cooperated with Kaiser in Kaiser's civil suit against petitioner's co-conspirator, and petitioner's cooperation was helpful in enabling Kaiser to obtain a judgment against the co-conspirator. Dennis Howell is a senior investigator with Kaiser's national special investigations unit. Mr. Howell wrote a letter dated April 17, 2006, praising petitioner for his cooperation. He wrote, "Without Mr. Cheung's assistance and forthright honesty, this prosecution of Mr. Lee-Fong Ho would not have been possible."

13. As noted above, the court sentenced petitioner to 16 months in prison. He, however, obtained an early release and was required to serve only 13 months.

14. On May 7, 2005, petitioner obtained an early discharge from parole.

15. Petitioner declares that he has eliminated gambling from his life.

16. Timothy Fong, MD, Assistant Clinical Professor of Psychiatry, University of California at Los Angeles, has treated petitioner since October of 2006. Dr. Fong does research regarding addiction and treats patients who are addicted to drugs or gambling. He is board certified in adult psychiatry and in addiction psychiatry. He has seven years of clinical experience working with pathological gamblers. Dr. Fong testified that petitioner's pathological addiction to gambling is in remission. Dr. Fong saw petitioner in March of 2007 and found no psychiatric disease or pathology. He is of the opinion that it is unlikely that petitioner will gamble again. He bases his opinion, in part, on petitioner's four years of not gambling, his strong family and social network, his record of compliance with conditions that have been imposed on him, and his good performance in a full-time job. Dr. Fong also bases his opinion on the fact that petitioner gambled for only a relatively brief time – two years.

17. Petitioner continues to talk with Dr. Fong three or four times a year.

18. Since March of 2004, petitioner has been employed at Amphastar Pharmaceuticals, Inc., as a chemical research coordinator for clinical trials.

## LETTERS OF RECOMMENDATION

19. Tony Marrs is an associate vice president for clinical research at Amphastar Pharmaceuticals Inc., petitioner's employer. Mr. Marrs wrote a letter dated November 3, 2006. When petitioner applied for a job in March of 2004, Mr. Marrs was reluctant to hire him because of his felony conviction. Amphastar, however, did hire petitioner, and Mr. Marrs wrote that petitioner has a vast amount of knowledge and has been a very good employee. Mr. Marrs has come to trust petitioner and recommends that his license be reinstated.

20. Petitioner submitted five letters from licensed pharmacists who were aware of petitioner's conviction and license revocation.

21. Frank Ayala, a licensed pharmacist, wrote a letter dated September 30, 2006. Mr. Ayala has known petitioner for 20 years. They worked together for 10 years. Mr. Ayala wrote that he had admired petitioner for his many good qualities and was dismayed when petitioner stole from Kaiser. Mr. Ayala and petitioner continue to be friends, and Mr. Ayala is of the opinion that petitioner "is truly remorseful and is ready to, once again, begin an outstanding career as a pharmacist."

22. John Cheung, a licensed pharmacist, wrote a letter dated November 21, 2006. Petitioner and Mr. Cheung worked together at Thrifty Drugs and at Kaiser. Mr. Cheung praised petitioner highly. He is of the opinion that petitioner is completely rehabilitated.

23. George Clark, a licensed pharmacist, wrote a letter dated May 10, 2006. Mr. Clark has known petitioner 17 years. They worked together 12 years. Mr. Clark described petitioner as "efficient, hardworking, and conscientious." Mr. Clark was shocked to learn that petitioner had stolen drugs from Kaiser. Mr. Clark wrote that petitioner "seems to be fully recovered." Mr. Clark is of the opinion that petitioner "would never again make the mistakes he has made."

24. Betty Yang-Lau, a licensed pharmacist, wrote a letter dated October 2, 2006. Ms. Yang-Lau worked at Kaiser when petitioner was there but did not work "directly" with him. She was aware, however, that he "had a wonderful reputation as a pharmacist." When Ms. Yang-Lau learned of petitioner's gambling problem and theft, she was stunned and saddened. Ms. Yang-Lau wrote, "I understand that Mr. Cheung has made . . . a commitment to rehabilitation." She wrote that petitioner "is a dedicated pharmacist and an asset to the pharmacy profession."

25. Phillip Moy, a licensed pharmacist, wrote an undated letter. Mr. Moy was petitioner's supervisor at Kaiser for 14 years. Mr. Moy wrote that petitioner was dependable, hard-working, knowledgeable, flexible, dedicated, and "totally committed to providing excellent patient care and fast prescription service." Mr. Moy wrote, "I feel that Hoi has been rehabilitated. He has learned a valuable and costly lesson."

26. Petitioner submitted five letters from people other than licensed pharmacists. The letters are dated from September 19 to December 15, 2006. All five of these letter writers were aware of petitioner's conviction and license revocation. They wrote, variously, that petitioner "is well on the road to total recovery," and that he is determined, dedicated, conscientious, knowledgeable, sincere, and tireless.

## LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 9 through 26, it is determined that petitioner has made substantial progress toward rehabilitation and that it would not be against the public interest to issue a probationary license. Petitioner is very remorseful. Between March of 2002 and April of 2003, he and his wife attended 19 meetings of gamblers anonymous. He made full restitution to Kaiser and cooperated with Kaiser in a civil suit against his co-conspirator. He obtained early release from both prison and parole. Dr. Fong is of the opinion that petitioner's gambling addiction is in remission. Petitioner began working shortly after he was released from prison, and his employer praises him highly. Finally, the letters of recommendation are reassuring.

2. By reason of the matters set forth in Findings 7 and 8, it is determined that petitioner has satisfactorily maintained his knowledge as a pharmacist.

3. Petitioner's license should be reinstated subject to appropriate conditions of probation.

4. By reason of the matters set forth in Finding 5, it is determined that the board is entitled to recover costs of \$8,298. In *Zuckerman v. State Board of Chiropractic Examiners*,<sup>1</sup> a case in which the State Board of Chiropractic Examiners had disciplined a licensee, the Supreme Court of California dealt with the issue of cost recovery. The court held that "the Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that ... [cost recovery] does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing." The court established five rules that an agency must observe in assessing the amount to be charged. In this case petitioner agreed to pay \$8,298, and his agreement causes four of the court's rules to be inapplicable here. One rule, however, deals with a party's ability to make later payments and, therefore, is applicable here. The court said, "Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [citation] the Board must determine that the chiropractor will be financially able to make later payments."<sup>2</sup>

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<sup>1</sup> *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

<sup>2</sup> *Id.* at p. 45.

## ORDER

The petition for reinstatement is granted. If petitioner satisfies all statutory and regulatory requirements for issuance of a license, the board shall reinstate his license. The license shall immediately be revoked. The revocation shall be stayed, however, for three years, and petitioner shall be placed on probation on the following conditions:

1. Petitioner shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy. Petitioner shall report any of the following occurrences to the board, in writing, within 72 hours of such occurrence: an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state or federal food and drug laws, or state or federal controlled substances laws; a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information, or indictment; a conviction of any crime; discipline, citation, or other administrative action filed by any state or federal agency that involves petitioner's license or that is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing for, or charging for any drug, device, or controlled substance.
2. Petitioner shall report to the board quarterly. The report shall be made either in person or in writing, as directed. Petitioner shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the board.
3. On receipt of reasonable notice, petitioner shall appear in person for interviews with the board on request at various intervals at a location to be determined by the board. Failure to appear for a scheduled interview without prior notification to board staff shall be considered a violation of probation.
4. Petitioner shall cooperate with the board's inspection program and in the board's monitoring and investigation of petitioner's compliance with the terms and conditions of petitioner's probation. Failure to comply shall be considered a violation of probation.
5. Petitioner shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board.
6. Petitioner shall notify all present and prospective employers of this decision and the terms, conditions, and restrictions imposed on petitioner by this decision. Within 30 days of the effective date of this decision, and within 15 days of petitioner undertaking new employment, petitioner shall cause petitioner's direct supervisor, pharmacist-in-charge, and/or owner to report to

the board in writing acknowledging that the employer has read this decision. If petitioner works for or is employed by or through a pharmacy employment service, petitioner must notify the direct supervisor, pharmacist-in-charge, and/or owner at every pharmacy of the terms and conditions of this decision in advance of petitioner's commencing work at each pharmacy. "Employment" within the meaning of this provision shall include any full-time, part-time, temporary, relief, or pharmacy management service as a pharmacist, whether petitioner is considered an employee or independent contractor.

7. Petitioner shall not supervise any intern pharmacist or perform any of the duties of a preceptor. Petitioner shall not be the pharmacist-in-charge of any entity licensed by the board unless otherwise specified in this order.
8. Petitioner shall pay to the board its costs of investigation and prosecution in the amount of \$8,298. If petitioner applies for permission to pay those costs in installments, the board, as is required by *Zuckerman*, must determine whether a payment schedule is necessary so that petitioner will be financially able to pay the board's costs.
9. Petitioner shall pay the costs associated with probation monitoring as determined by the board each year of probation. Such costs shall be payable to the board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.
10. Petitioner shall, at all times while on probation, maintain an active, current license with the board, including any period during which suspension or probation is tolled. If petitioner's license expires or is cancelled by operation of law or otherwise, on renewal or reapplication, petitioner's license shall be subject to all terms and conditions of this probation not previously satisfied.
11. Following the effective date of this decision, should petitioner cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, petitioner may tender petitioner's license to the board for surrender. The board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. On formal acceptance of the surrender of the license, petitioner will no longer be subject to the terms and conditions of probation. On acceptance of the surrender, petitioner shall relinquish petitioner's pocket license to the board within 10 days of notification by the board that the surrender is accepted. Petitioner may not reapply for any license from the board for three years from the effective date of the surrender. Petitioner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

12. Petitioner shall notify the board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor, or owner and work schedule if known. Petitioner shall notify the board in writing within 10 days of a change in name, mailing address, or phone number.
13. Should petitioner, regardless of residency, for any reason cease practicing pharmacy for a minimum of 80 hours per calendar month in California, petitioner must notify the board in writing within 10 days of cessation of the practice of pharmacy or the resumption of the practice of pharmacy. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for petitioner's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three years. "Cessation of practice" means any period of time exceeding 30 days in which petitioner is not engaged in the practice of pharmacy as defined in Section 4052 of the Business and Professions Code for at least 80 hours a calendar month.
14. If petitioner violates probation in any respect, the board, after giving petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against petitioner during probation, the board shall have continuing jurisdiction, and the period of probation shall be extended until the petition to revoke probation or accusation is heard and decided.
15. If petitioner has not complied with any term or condition of probation, the board shall have continuing jurisdiction over petitioner, and probation shall automatically be extended until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.
16. Within 30 days of the effective date of this decision, petitioner shall submit to the board, for its prior approval, the name and qualifications of a licensed mental health practitioner of petitioner's choice. When the board approves the licensed mental health practitioner, petitioner shall undergo and continue treatment with that therapist and at petitioner's own expense, until the board deems that no further psychotherapy is necessary. If petitioner, for any reason, ceases treatment, petitioner shall notify the board immediately and, within 30 days of ceasing treatment, petitioner shall submit the name of a replacement psychotherapist or licensed mental health practitioner of petitioner's choice to the board for its prior approval. Therapy shall be at least once a week unless otherwise determined by the board. Petitioner shall provide the therapist with a copy of the board's accusation and decision no later than the first therapy session. Petitioner shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the board concerning petitioner's



fitness to practice, progress in treatment, and such other information as may be required by the board. If the treating therapist finds that petitioner cannot practice safely or independently, the therapist shall notify the board immediately by telephone and follow up by written letter within three working days. The board may require petitioner to undergo mental health evaluations by a board-appointed or board-approved licensed mental health practitioner.

17. Within 10 days of the effective date of this decision, petitioner shall identify a work site monitor, for prior approval by the board, who shall be responsible for supervising petitioner during working hours. The monitor shall report to the board quarterly. If the monitor determines at any time that petitioner poses a risk of harm to the public or his employer, the monitor shall notify the board immediately, either orally or in writing as directed. If petitioner changes employment, a new work site monitor must be designated, for prior approval by the board, within 10 days of petitioner's commencing new employment.
18. On petitioner's successful completion of probation, the license will be fully restored.

DATED: May 31, 2007

Effective Date: June 6, 2007



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WILLIAM POWERS

President

California State Board of Pharmacy

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of the State of California  
2 BARRY G. THORPE, State Bar No. 126422  
Deputy Attorney General  
3 California Department of Justice  
300 So. Spring Street, Suite 1702  
4 Los Angeles, CA 90013  
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5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7 **BEFORE THE**  
8 **BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 HOI-CHI CHEUNG

13 Respondent.

14 Pharmacist License No. RPH 35355

Case No. 2578

OAH No. L-2003070785

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

15 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
16 proceeding that the following matters are true:

17 PARTIES

18 1. Patricia F. Harris (Complainant) is the Executive Officer of the Board of  
19 Pharmacy (Board). She brought this action solely in her official capacity and is represented in  
20 this matter by Bill Lockyer, Attorney General of the State of California, by Barry G. Thorpe,  
21 Deputy Attorney General.

22 2. Hoi-Chi Cheung (Respondent) is represented in this proceeding by  
23 attorney Donald B. Brown, whose address is Law Offices of Donald B. Brown, 3848 Carson  
24 Street, Suite 206, Torrance, CA 90503.

25 3. On or about June 11, 1980, the Board of Pharmacy issued Pharmacist  
26 License Number RPH 35355 to Hoi-Chi Cheung. The Pharmacist License was in full force and  
27 effect at all times relevant to the charges brought herein and will expire on October 31, 2003,  
28 unless renewed.

4. On or about June 23, 2003, the Board automatically and summarily suspended Respondent's Pharmacist License, pursuant to California Business and Professions Code (Code) section 4311(a) and 4311(b), following Respondent's felony convictions and incarceration.

## JURISDICTION

5. Accusation No. 2578 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 8, 2003. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2578 is attached as exhibit A and incorporated herein by reference.

6. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

## ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2578. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 CULPABILITY

2 10. Respondent admits the truth of each and every charge and allegation in  
3 Accusation No. 2578, agrees that cause exists for discipline and hereby surrenders his  
4 Pharmacist License Number RPH 35355, for the Board's formal acceptance.

5 11. Respondent understands that by signing this stipulation he enables the  
6 Board to issue an order accepting the surrender of his Pharmacist License Number RPH 35355  
7 without further process.

8 RESERVATION

9 12. The admissions made by Respondent herein are only for the purposes of  
10 this proceeding, or any other proceedings in which the Board or other professional licensing  
11 agency is involved, and shall not be admissible in any other criminal or civil proceeding.

12 CONTINGENCY

13 13. This stipulation shall be subject to approval by the Board. Respondent  
14 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy  
15 may communicate directly with the Board regarding this stipulation and settlement, without  
16 notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent  
17 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation  
18 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation  
19 as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or  
20 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,  
21 and the Board shall not be disqualified from further action by having considered this matter.

22 14. The parties understand and agree that facsimile copies of this Stipulated  
23 Surrender of License and Order, including facsimile signatures thereto, shall have the same force  
24 and effect as the originals.

25 15. In consideration of the foregoing admissions and stipulations, the parties  
26 agree that the Board may, without further notice or formal proceeding, issue and enter the  
27 following Order:

28 ///

**ORDER**

IT IS HEREBY ORDERED that Pharmacist License Number RPH 35355, issued to Respondent Hoi-Chi Cheung is surrendered and accepted by the Board of Pharmacy.

16. The surrender of Respondent's Pharmacist License Number RPH 35355 and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

17. Respondent shall lose all rights and privileges as a licensed pharmacist in California as of the effective date of the Board's Decision and Order.

18. Respondent shall cause to be delivered to the Board both his wall and pocket license certificate on or before the effective date of the Decision and Order.

19. Respondent fully understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 2578 shall be deemed to be true, correct, and admitted by Respondent when the Board determines whether to grant or deny the petition.

20. Respondent shall pay the Board its costs of investigation and enforcement in the amount of \$8,298.00 prior to issuance of a new or reinstated license.

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ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Donald B. Brown. I understand the stipulation and the effect it will have on my Pharmacist License Number RPH 35355. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 11-17-03.

Hoi-Chi Cheung  
HOI-CHI CHEUNG  
Respondent

I have read and fully discussed with Respondent Hoi-Chi Cheung the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: NOV 4 2003.

[Signature]  
DONALD B. BROWN  
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

DATED: 11-25-03

BILL LOCKYER, Attorney General  
of the State of California

  
BARRY G. THORPE  
Deputy Attorney General

Attorneys for Complainant

DOJ Docket Number/Matter ID: 03583110-LA2002AD1866  
60016190.wpd

**BEFORE THE  
BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

HOI-CHI CHEUNG

Respondent.

Pharmacist License No. RPH 35355

Case No. 2578

OAH No. L-2003070785

**DECISION AND ORDER**

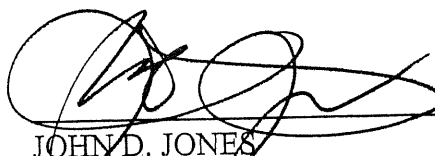
The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on February 14, 2004.

It is so ORDERED January 15, 2004.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

  
JOHN D. JONES  
Board President



**Exhibit A**

**Accusation No. 2578**

1 BILL LOCKYER, Attorney General  
of the State of California  
2 BARRY G. THORPE, State Bar No. 126422  
Deputy Attorney General  
3 California Department of Justice  
300 So. Spring Street, Suite 1702  
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Telephone: (213) 897-5845  
5 Facsimile: (213) 897-2804

6 Attorneys for Complainant

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2578

11 HOI-CHI CHEUNG  
12 651 N. Featherwood Drive  
Diamond Bar, CA 91765

**A C C U S A T I O N**

13 Pharmacist License No. RPH 35355

14 Respondent.  
15

16 Complainant alleges:  
17

18 PARTIES

19 1. Patricia F. Harris (Complainant) brings this Accusation solely in her  
20 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer  
21 Affairs (Board).

22 2. On or about June 11, 1980, the Board issued Pharmacist License Number  
23 RPH 35355 to Hoi-Chi Cheung (Respondent). The Pharmacist License was in full force and  
24 effect at all times relevant to the charges brought herein and will expire on October 31, 2003,  
25 unless renewed.

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27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Board under the authority of the below-mentioned statutes and regulations.<sup>1</sup>

4. Section 4300 of the Code permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.

5. Section 4301 of the Code states, in pertinent part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

.....

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

.....

(j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.

.....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order

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1. All statutory references are to the Business and Professions Code (Code) unless otherwise indicated.

1 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
2 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
3 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty  
4 or a conviction following a plea of nolo contendere is deemed to be a conviction within the  
5 meaning of this provision. The board may take action when the time for appeal has elapsed, or  
6 the judgment of conviction has been affirmed on appeal or when an order granting probation is  
7 made suspending the imposition of sentence, irrespective of a subsequent order under Section  
8 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a  
9 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,  
10 or indictment.

11 . . . ."

12 6. Section 4051 of the Code states, in pertinent part that:

13 (a) Except as otherwise provided in this chapter [Chapter 9 (commencing with Section  
14 4000 of the Business and Professions Code)], it is unlawful for any person to manufacture,  
15 compound, furnish, sell, or dispense any dangerous drug or dangerous device, or to dispense or  
16 compound any prescription pursuant to Section 4040 of a prescriber unless he or she is a  
17 pharmacist under this chapter."

18 7. Section 4059 of the Code states, in pertinent part:

19 "(a) A person may not furnish any dangerous drug, except upon the prescription of  
20 a physician, dentist, podiatrist, optometrist, or veterinarian. A person may not furnish any  
21 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, or  
22 veterinarian."

23 8. Section 490 provides that the Board may suspend or revoke a license when  
24 it finds that the licensee has been convicted of a crime, if the crime is substantially related to the  
25 qualifications, functions, or duties of that license.

26 9. Section 118, subdivision (b), of the Code provides that the suspension,  
27 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to

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1 proceed with a disciplinary action during the period within which the license may be renewed,  
2 restored, reissued or reinstated.

3 10. Title 16, California Code of Regulations section 1770 provides that for  
4 purpose of denial, suspension, or revocation of a license, a crime or act shall be considered  
5 substantially related to the qualifications, functions or duties of a licensee if to a substantial  
6 degree it evidences present or potential unfitness of a licensee to perform the functions  
7 authorized by his license in a manner consistent with public health, safety, or welfare.

8 11. Section 125.3 of the Code provides, in pertinent part, that the Board may  
9 request the administrative law judge to direct a licensee found to have committed a violation or  
10 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
11 and enforcement of the case.

12 12. DANGEROUS DRUGS

13 a. "Viagra," a brand name for sildenafil citrate, for the treatment of erectile  
14 dysfunction, is categorized as a dangerous drug pursuant to section 4022 of the Code.

15 b. "Diflucan," a brand name for fluconazole, an anti-fungal agent, is  
16 categorized as a dangerous drug pursuant to section 4022 of the Code.

17 c. "Xenical," a brand name for orlistat, for the treatment of obesity, is  
18 categorized as a dangerous drug pursuant to section 4022 of the Code.

19 d. "Zithromax," a brand name for azithromycin, an antibiotic, is categorized  
20 as a dangerous drug pursuant to section 4022 of the Code.

21 FIRST CAUSE FOR DISCIPLINE

22 **(Commission of Act Involving Moral Turpitude, Dishonesty or Fraud)**

23 13. Respondent is subject to disciplinary action under sections 4300 and  
24 4301(f) of the Code in that Respondent took dangerous drugs from the his employer, Kaiser  
25 Foundation Hospital Pharmacy No. 197; a.k.a. Link Pharmacy (Link Pharmacy). The  
26 circumstances are as follows:

27 In or about February of 2002, an internal audit by the Kaiser Pharmacy Audit and  
28 Compliance Team revealed that between January 1, 2000, and January 1, 2002, there was an

1 unexplained variance of approximately 71,711 tablets of Viagra, with a wholesale value in excess  
2 of \$500,000.00, unaccounted for at the Link Pharmacy. Respondent was the Link Pharmacy  
3 manager from January 2000 to February 2002, and controlled the ordering and transfer of Viagra  
4 from the narcotic safe to the Viagra dispense bin. On or about February 20, 2002, Respondent  
5 was questioned by Kaiser investigators, and admitted to stealing about 10 bottles of Viagra in  
6 December 1999, and approximately 60 bottles of Viagra per month from January 2000 to  
7 February 20, 2002. Respondent stated he sold the Viagra for \$165.00 a bottle, to an individual he  
8 met at the racetrack, known to him as "Phillip Ho." Respondent also admitted to having stolen 2  
9 bottles of Xenical, 2 bottles of Diflucan and one bottle of Zithromax, during the morning hours  
10 of February 20, 2002.

#### 11 SECOND CAUSE FOR DISCIPLINE

##### 12 (Possess, Furnish Dangerous Drugs Without a Prescription)

13 14. Respondent is subject to disciplinary action under sections 4300 and  
14 4301(j), in conjunction with sections 4051 and 4059 of the Code, in that Respondent possessed,  
15 furnished, sold or dispensed dangerous drugs to others without a prescription, as more fully set  
16 forth in paragraph 13, above.

#### 17 THIRD CAUSE FOR DISCIPLINE

##### 18 (Conviction of Substantially Related Crimes)

19 15. Respondent has subjected his license to discipline pursuant to section 490,  
20 in conjunction with Title 16, California Code of Regulations section 1770, by reason of his  
21 conviction of crimes which are substantially related to the qualifications, functions, and duties of  
22 the profession for which the license was issued, as follows:

23 On February 4, 2003, Respondent was convicted by his plea of guilty, of violating  
24 Penal Code section 487 [felony grand theft] and of two violations of Penal Code section 508  
25 [felony embezzlement by an agent], in the County of San Bernardino Superior Court, Case No.  
26 FVA016893.

27 The circumstances of the crimes are described in paragraph 13, above.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Convictions)**

3 16. Respondent has subjected his license to discipline pursuant to section 4300  
4 for unprofessional conduct as defined in section 4301(l), by reason of his convictions, as  
5 described in paragraphs 13 and 15 above, of crimes which are substantially related to the  
6 qualifications, functions, and duties of a pharmacist licensee.

7 The circumstances of the crimes are described in paragraph 13, above.

8  
9 **PRAYER**


10 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
11 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

12 A. Revoking or suspending Pharmacist License Number RPH 35355, issued  
13 to Hoi-Chi Cheung;

14 B. Ordering Hoi-Chi Cheung to pay the Board of Pharmacy the reasonable  
15 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
16 Code section 125.3;

17 C. Taking such other and further action as deemed necessary and proper.

18 DATED: 6/23/03

19  
20   
21 PATRICIA F. HARRIS  
22 Executive Officer  
23 Board of Pharmacy  
24 Department of Consumer Affairs  
25 State of California  
26 Complainant

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